

Office of the Standing Chapter 13 Trustee  
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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE:	§	CASE NO: 16-32642-SGJ
	§	
<b>ANTONIO CABALLERO</b>	§	CHAPTER 13
	§	
DEBTOR	§	PRE-HEARING: <b>August 11, 2016</b>
	§	TIME: <b>8:30 A.M.</b>

**TRUSTEE'S MOTION TO DISMISS WITH PREJUDICE**

TO THE HONORABLE STACEY G.C. JERNIGAN, BANKRUPTCY JUDGE:

Comes now, Thomas D. Powers, Chapter 13 Trustee, herein, and pursuant to Sections 1307(c) and 109(g) of the Bankruptcy Code and Bankruptcy Rule 9014 files this Motion to Dismiss the above proceeding with prejudice, and would show unto the Court as follows:

1. Debtor initiated this instant Chapter 13 proceeding by the filing of a voluntary petition on July 1, 2016.
2. Debtor has filed the following cases within the last six (6) years.
  - a. **Case No. 11-40216-RFN-13**, which was not disclosed, was filed by Debtor on January 4, 2011 and dismissed on February 17, 2011 for failure to make the first payment to the Trustee prior to confirmation. Debtor was represented by Patrick David West in this matter.
  - b. **Case No. 11-34738-HDH-13**, which was not disclosed, was filed by Debtor on July 28, 2011 and dismissed with prejudice for six (6) months on November 7, 2011 for failure to have his proposed Chapter 13 Plan confirmed. Debtor was represented by Armstrong Kellett Bartholow PC in this matter.
  - c. **Case No. 10-44556-RFN-13**, which was not disclosed, was filed by Debtor on July 6, 2010 and dismissed on August 9, 2010 for failure to file the required documents with the Court. Debtor was represented by Patrick David West in this matter.

3. The pattern of filing repetitive Bankruptcy proceedings constitutes “serial filings.” As noted, this is the fourth (4) bankruptcy filing by the Debtor since July 6, 2010. The filing of serial Bankruptcy petitions is not per se prohibited. However, the Trustee submits that debtor’s serial filings exhibit lack of “good faith” as required by 11 U.S.C. Section 1307(c) which states in part: “...on the request of a party in interest ... and after notice and a hearing, the court may convert ... or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, ...”
4. Thus an abuse of Section 362 occurs when the Debtor has no intention of effectuating a realistic plan and the bankruptcy court’s self-executing injunction results in unnecessary and costly delay. Abuse of the automatic stay provision (by multiple filings) may constitute grounds for imposing the measures provided under Bankruptcy Rule 9011. See, In re Franz, 142 B.R. 611 (Bkrtpcy.D.Conn) 1992).
5. The previous filings of the Debtor shows a pattern of conduct that does not comport with the spirit of the Bankruptcy Code’s provisions. This supports a conclusion that the latest in a series of petitions was filed for the primary purpose of delaying creditors.

Wherefore, Standing Chapter 13 Trustee, Movant herein prays for the entry by this Court of an Order Dismissing the above styled Chapter 13 proceeding of the Debtor, with prejudice for a period of five (5) year, and for all other just and proper relief.

Respectfully submitted,

/s/ Deborah B. Morton  
Deborah B. Morton  
Attorney for Chapter 13 Trustee  
State Bar No. 14558980  
125 E. John Carpenter Freeway  
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**NOTICE OF HEARING**

You are hereby notified of the filing of the "Trustee's Motion to Dismiss with Prejudice" and "Notice of Hearing Thereon" for the reasons therein stated.

A pre-hearing conference on the "Trustee's Motion to Dismiss with Prejudice" will be held on **August 11, 2016** at 8:30 a.m. in at 125 E. John Carpenter Freeway, Suite 1100, 11<sup>th</sup> Floor, Irving, Texas. Any objections to the proposed motion not resolved or defaulted at the pre-hearing conference will be heard by the Court on the same day at 2:00 p.m. at 1100 Commerce Street, Fourteenth Floor, Dallas, Texas. Parties are not required to attend the pre-hearing conference unless they object to the motion.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing "Trustee's Motion to Dismiss with Prejudice" and "Notice of Hearing Thereon" has been served on the 8<sup>th</sup> day of July, 2016 to the following parties at the addresses listed below by United States First Class Mail, or electronic service.

**Debtor:**

Antonio Caballero  
14105 Rocksprings Court  
Dallas, Texas 75254

Dated: July 8, 2016

/s/ Deborah B. Morton  
Deborah B. Morton